

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.**

In the Matter of:

Accent Movers, Inc.,

Respondent.

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) **Docket No. FMCSA-2007-0089**
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) **(Southern Service Center)**
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DEPT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.
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**CLAIMANT'S MOTION TO PERMIT
WITNESS TO TESTIFY BY TELEPHONE**

Claimant, Field Administrator for the Federal Motor Carrier Safety Administration (FMCSA), Southern Service Center, respectfully requests the Administrative Law Judge permit Claimant's witness to testify in this matter by telephone. In support thereof Claimant states:

1. The above-captioned civil penalty proceeding was commenced through the issuance of a Notice of Claim pursuant to 49 C.F.R. Part 386 which included a Statement of Charges detailing the violations of Federal statute and regulations discovered during a compliance review completed on or about May 17, 2007 of Accent Movers, Inc. The Notice of Claim charged Respondent with one violation of 49 C.F.R. § 392.9a(a) / 49 U.S.C. § 14901(d)(3), failure to register or maintain registration as a household goods broker or motor carrier. The Notice of Claim proposed a civil penalty of \$25,000 for the charged violation. Respondent, through its attorney, timely filed a reply to the Notice of Claim. In its reply Respondent denied the charged violation and

requested a formal hearing in this proceeding. The Field Administrator consented to Respondent's request for hearing on December 17, 2007.

2. On November 12, 2008 the Assistant Administrator served an Order forwarding the matter to the Office of Hearings for an administrative law judge to preside over the proceeding. The case was assigned to the Honorable Richard C. Goodwin by Order served November 26, 2008.

3. A Hearing before Administrative Law Judge Goodwin was originally set for the dates of March 16-20, 2009. On March 11, 2009 Judge Goodwin granted Respondent's unopposed motion for continuance and reset the Hearing for the dates of June 15-19, 2009.

4. A witness of the Claimant, Michelle Coogan the shipper of the household goods underlying the transportation charged in the Notice of Claim, currently resides in the State of Wisconsin in order to care for her mother. Ms. Coogan is not an employee of FMCSA or other governmental agency. Arranging for the witness' travel to Texas for the hearing would pose a hardship for the witness and Claimant. Claimant anticipates Ms. Coogan will testify as to her contacts and dealings with Accent Movers regarding the transportation of her household goods from California to Texas, and her payments to Accent Movers. Ms. Coogan's written statement, documents provided by the witness, and FMCSA investigators' summary of oral interviews with Ms. Coogan are attached to Claimant's Motion for Summary Judgment and were provided to Respondent in responses to discovery requests. The Rules of Practice authorize the Administrative Law Judge to regulate the administrative adjudication and the hearing, and to receive relevant


and material evidence;¹ in the context of depositions the Rules of Practice specifically allow the taking of testimony of a witness by telephone by stipulation of the parties or by order of the Administrative Law Judge.² Claimant anticipates Ms. Coogan's testimony to be relatively brief, and allowing the witness to testify by telephone would not prejudice Respondent.

WHEREFORE, Claimant respectfully requests the witness, Michelle Coogan, be permitted to testify in this matter by telephone.

Respectfully Submitted,
Attorneys for the Claimant

Date: June 10, 2009

By:



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¹ See 49 C.F.R. § 386.54.

² See 49 C.F.R. § 386.44(a)(3).

CERTIFICATE OF SERVICE

This is to certify that on the 10th of June 2009, the undersigned served, as specified, the designated number of copies of Claimant's Motion to Permit Witness to Testify by Telephone to each of the parties listed below:

The Honorable Richard C. Goodwin Administrative Law Judge Office of Hearings, M-20 U.S. Department of Transportation 1200 New Jersey Avenue, SE Room E12-320 Washington, DC 20590	Original and one copy Federal Express FedEx # 7966 8296 2494 And electronic mail
John L. Gamboa Acuff Gamboa & White, L.L.P. Attorneys for Respondent 2501 Parkview Drive, Suite 405 Fort Worth, Texas 76102-5816	One Copy Federal Express FedEx # 7976 7032 9230
US DOT Dockets Docket Operations U.S. Department of Transportation 1200 New Jersey, SE West Building Ground Floor, Room W12-140 Washington, DC 20590-0001	One Copy Federal Express FedEx # 7976 7030 7236
Joanne A. Cisneros Division Administrator Federal Motor Carrier Safety Administration Texas Division 903 San Jacinto Blvd. Austin, Texas 78701	One Copy Internal Mail
Nancy Jackson Office of Chief Counsel Federal Motor Carrier Safety Administration Western Service Center 12600 West Colfax Avenue, Suite B-300 Lakewood, CO 80215	One Copy Internal Mail
Darrell L. Ruban Field Administrator c/o Paula Smith Federal Motor Carrier Safety Administration Southern Service Center 1800 Century Blvd Suite 1700 Atlanta, GA 30345	One Copy Federal Express FedEx # 7966 8298 7421

